

**Findings Relating to The Environmental Impact
Report For The Pacific Lumber Company Habitat Conservation Plan/Sustained
Yield Plan for The Headwaters Forest Project
In Compliance With The California Environmental Quality Act (CEQA) and The
California Endangered Species Act (CESA)**

Responsible Agency: California Department of Fish and Game

The California Department of Fish and Game (Department) hereby adopts the following findings related to the Pacific Lumber Company (PALCO) Habitat Conservation Plan (HCP)/Sustained Yield Plan (SYP) for the Headwaters Forest Project. The Project requires execution of a Streambed Alteration Agreement (1603 Agreement) pursuant to Fish and Game Code Section 1603 between the Department and the Pacific Lumber Company, Scotia Pacific Company LLC, and Salmon Creek Corporation (collectively, PALCO), issuance of an incidental take permit (ITP) pursuant to Fish and Game Code Section 2081(b) and (c), and the execution of an Implementation Agreement (IA) in association with the ITP.

1.0 INTRODUCTION

A. Purpose of the Findings

(1) CEQA Findings

These findings relate to the Final EIS/EIR (January 1999) for the Pacific Lumber Company HCP/SYP, which was prepared by the California Department of Forestry and Fire Protection (CDF) (SCH# 97012027) and certified by CDF on February 25, 1999. The California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 *et seq.*), specifically Section 21081 and CEQA Guidelines Section 15096, requires the Department, as state responsible agency, to make findings as required by CEQA Guidelines Section 15091, and if necessary CEQA Guidelines Section 15093, before it can issue the ITP, approve the HCP and execute the IA associated with the ITP, and execute the 1603 Agreement related to the Headwaters Forest Project. Specifically, CEQA Guidelines Section 15091 requires a responsible agency to make one or more written findings for each significant environmental effect identified in an EIR. For each significant effect, a responsible agency must make one of the following findings, supported by substantial evidence in the administrative record and accompanied by a brief explanation of the rationale therefor:

(1) that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR;

(2) that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and such changes have been adopted by such other agency or can and should be adopted by such other agency; and

(3) that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(2) California Endangered Species Act (CESA) Findings

The Department makes certain findings with regard to the project and the permit issuance criteria for the ITP as set forth in Section 2081(b) and (c) of CESA. Unless these permit issuance criteria are met, the Department cannot issue the ITP. These findings are supported by substantial evidence in the administrative record.

B. Administrative Record

The administrative record is comprised of the following: (1) information, notes, and surveys created, kept, and/or maintained by the Department and relevant to this Project; (2) all material submitted to the Department as part of the ITP application and the 1603 Agreement notification, including the Draft HCP/SYP (July 1998); (3) all documents, written memoranda, comments, and exhibits given to the Department during the preparation of the Draft and Final EIS/EIR; (4) all notices to the public concerning the Draft and Final EIS/EIR, including the Notice of Preparation, Notice of Availability, and public meeting notices; (5) any transcripts of public meetings on the Draft EIS/EIR; (6) the Draft EIS/EIR (July 1998), Final EIS/EIR (January 1999), the Draft HCP/SYP, the Final HCP/SYP (February 1999), the IA (February 1999), the Federal Biological/Conference Opinion (No. 1-12-99-18) prepared by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, the 1603 Agreement, all other documents referenced in them or incorporated by reference, and any other documents, including notes and correspondence of the Department pertaining to them; (7) these Findings; (8) the Mitigation, Monitoring, and Reporting Program; (9) the Notice of Determination; (10) the 1603 Agreement and the ITP; and (11) any additional items not included above if they are required by law.

The custodian for these records is Mark Stopher, Environmental Services Supervisor. These documents will be maintained at:

Department of Fish and Game
Northern California and North Coast Region
601 Locust Street, Redding, California 96001

2.0 CEQA FINDINGS ON SIGNIFICANT IMPACTS OF THE PROJECT

The Department makes the following findings regarding the significant or potentially significant effects identified in the Final EIS/EIR:

Water Quality, Hydrology, and Floodplains: Pesticides/Herbicides

Impact: The Final EIS/EIR identifies the use of pesticides/herbicides as a less than significant impact on human health and water quality, and some compounds as potentially significantly for some aquatic species.

Mitigation Measure Identified in the Final EIR: The following measures have been identified to minimize the potential for significant effects:

1. No aerial applications of herbicides are proposed. If these voluntary restrictions continue, it would reduce contamination by direct application onto non-target areas thus reducing potential exposure to high levels of herbicides in water and off-site residents.
2. Consistent with state and federal requirements, herbicide applications must be under the supervision of state certified applicators, and done in accord with a specific application recommendation and the herbicide label restrictions and applied at the lowest effective rate.
3. PALCO has a spill contingency plan that delineates specific measures to be carried out in the event of an accidental spill of herbicides or any other hazardous material.

Mitigation Measure Required: The Department finds that it is feasible to adopt, and does hereby adopt, these mitigation measures, and requires that they be implemented by PALCO as follows as a condition of approval of the ITP, HCP, IA, and 1603 Agreement:

1. No aerial applications of herbicides.
2. Consistent with state and federal requirements, herbicide applications must be under the supervision of state certified applicators, and done in accordance with a specific application recommendation and the herbicide label restrictions and applied at the lowest effective rate.
3. PALCO must have a spill contingency plan that delineates specific measures to be carried out in the event of an accidental spill of herbicides or any other hazardous material.

In addition, in accordance with Section 15096(g)(2) of the CEQA Guidelines, the following feasible mitigation measure shall be implemented by PALCO as a condition of approval of the ITP, HCP, IA and 1603 Agreement.

4. PALCO shall not apply pesticides (including herbicides) within the no-harvest band of Class I, II, and III Riparian Management Zones (RMZs).

Finding: While the Department cannot determine whether these effects are, in fact, significant to aquatic species, the Department finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant or potentially significant environmental effect as identified in the Final EIS/EIR. The Department further finds that other changes or alterations are within the responsibility and jurisdiction of the California Department of Pesticide Regulation and the U.S. Environmental Protection Agency and not within the responsibility of the Department. Those two regulatory agencies should conduct research programs to resolve uncertainties and adopt whatever restrictions they determine are necessary for problems identified in their research. If those agencies determine after additional research that additional restrictions on use will be required through registration, licensing, or labeling actions, PALCO would be required to comply with those new requirements.

Rationale: The specified mitigation measures constitute feasible procedures which avoid and minimize potential application of pesticides/herbicides where they may directly affect species covered under the HCP and IA, particularly fish and amphibians. Further, the prohibition on application of pesticides (including herbicides) in the no-harvest bands of the Class I, II, and III RMZs will serve to protect canopy cover, maintain cool water temperatures and conserve vegetation which filters potentially affected sediment and reduces the degree to which it may reach streams.

Vegetation and Timber: Rare and Uncommon Flora

Impact: Probable significant effect to rare and uncommon flora, unless mitigated.

Mitigation Measure Identified in the Final EIS/EIR: The Final EIS/EIR identifies mitigation measures that are expected to mitigate the potential significant effects to rare and uncommon flora. They are specifically described in the HCP (February 1999) and Implementation Agreement (February 1999)), drafts of which were attached to the EIS/EIR as Appendices P and S, and are summarized as follows:

1. A qualified botanist shall be retained by PALCO and shall determine which rare plant species and habitat type/plant communities exist on PALCO property.
2. A guide shall be developed for use in training PALCO Registered Professional Foresters, employees, and contractors in identifying the presence of these habitats/communities

when performing activities covered by the HCP.

3. When planning activities covered by the HCP, PALCO employees and/or contractors shall identify potential habitat that may be affected by such activities.

4. PALCO shall retain a qualified botanist to verify the habitat determination and perform a survey, at the time of year appropriate to identify subject species and at an intensity sufficient to detect presence of the target species.

5. Results of these surveys shall be included with any THP submitted to CDF and shall also be submitted to the Department and to the U.S. Fish and Wildlife Service.

6. When rare plant species are detected in habitat that may be affected by an activity covered by the HCP, PALCO shall implement feasible measures to avoid, minimize, and/or mitigate significant adverse effects and CDF shall require one or more of such measures sufficient to provide such protection.

7. Locations of identified populations of rare plant species shall be reported by PALCO within 90 days of discovery to the Natural Diversity Data Base.

Mitigation Measure Required: The Department finds that it is feasible to adopt, and does hereby adopt, these mitigation measures, as specifically described in the HCP (February 1999) and Implementation Agreement (February 1999) and requires them to be implemented by PALCO as a condition of approval of the ITP, HCP, IA, and 1603 Agreement.

Finding: The Department finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIS/EIR.

Rationale: Implementation of the required mitigation measures will have a high probability of detecting the presence of rare plant species and vegetation communities during the project planning phase. Further, these measures provide for the development of site specific measures to avoid and minimize impacts. Survey data collected on the distribution and abundance of rare plants and vegetation communities will provide the information necessary to refine future survey procedures.

Vegetation and Timber: Old-growth Redwood and Douglas Fir Forest

Impact: The Final EIS/EIR identifies the loss of old-growth redwood and Douglas Fir forest as a significant effect based primarily on the unique characteristics of and inability to replace old-growth forest and the substantial body of public opinion that would consider this loss significant.

Mitigation Measure Identified in the Final EIS/EIR: The Final EIS/EIR identifies measures that will likely mitigate the impact of loss of old-growth and residual redwood and Douglas Fir. They are specifically described in the HCP (February 1999) and Implementation Agreement (February 1999), drafts of which were attached to the EIS/EIR as Appendices P and S, and are summarized as follows:

1. Establishment and protection of Marbled Murrelet Conservation Areas (MMCA's).
2. Protection of Grizzly Creek Complex for five years and possible protection for the remainder of the term of the ITP.
3. Additional acreage to enlarge Owl Creek MMCA and Grizzly Creek Complex.
4. Additional 300 foot buffers around MMCA's.
5. Hillslope management mass-wasting strategy harvest restrictions.
6. Additional 300 foot buffers around the southern edge of the Headwaters Reserve.
7. Harvest restrictions in Channel Migration Zones.
8. No Harvest and late seral Buffers on Class I, II, and III watercourses.

Mitigation Measure Required: The Department finds that it is feasible to adopt, and does hereby adopt, these mitigation measures, as specifically described in the HCP (February 1999) and Implementation Agreement (February 1999) and requires them to be implemented by PALCO as a condition of approval of the ITP, HCP, IA, and 1603 Agreement.

Finding: The Department finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIS/EIR.

Rationale: The required mitigation measures will provide for the conservation of old growth redwood forest in large stands (i.e., the MMCA's), in corridors along streams and in smaller stands in unstable areas. Old growth Douglas Fir forest will be conserved mainly along stream corridors and in small stands on unstable areas. Areas for conservation of old growth forest habitat provide additional resource benefits for species covered by the HCP and IA. These measures will reduce the acreage available for harvest and provide protection for old-growth redwood and Douglas Fir forest. These measures will also allow stands of large second growth redwood and Douglas Fir to grow into late seral stages and to take on characteristics of old-growth forest.

Wildlife: Marbled Murrelet

Impact: The Final EIS/EIR identifies potential short-term effects to marbled murrelet due to the incidental take and loss of some suitable nesting habitat, which may result in reduction of reproductive success.

Mitigation Measure Identified in the Final EIS/EIR: The Final EIS/EIR identifies measures that will likely mitigate the potential significant effects to the marbled murrelet in the long-term. They are specifically described in the HCP (February 1999) and Implementation Agreement (February 1999), drafts of which were attached to the EIS/EIR as Appendices P and S, and are summarized as follows:

1. Establishment and protection of Marbled Murrelet Conservation Areas (MMCAs).
2. Additional acreage to enlarge Owl Creek MMCA and Grizzley Creek Complex.
3. Establishment of seasonal buffers and late seral harvest buffers on PALCO lands bordering old-growth marbled murrelet habitat on public lands.
4. Additional 300 foot buffers around MMCAs.
5. Additional 300 foot buffers around the southern edge of the Headwaters Reserve.
6. Hillslope management mass-wasting strategy harvest restrictions.
7. Harvest restrictions in Channel Migration Zones.
8. Protection of Grizzley Creek Complex for five years and possible protection for the remainder of the term of the ITP.
9. Harvest restrictions in Channel Migration Zones.
10. No Harvest Buffers on Class I, II, and III watercourses.
11. Prioritization of harvest.

Mitigation Measure Required: The Department finds that it is feasible to adopt, and does hereby adopt, these mitigation measures, as specifically described in the HCP (February 1999) and Implementation Agreement (February 1999) and requires them to be implemented by PALCO as a condition of approval of the ITP, HCP, IA, and 1603 Agreement.

Finding: The Department finds that changes or alterations have been required in, or incorporated

into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIS/EIR.

Rationale: The required mitigation measures use the best available science to preserve the highest quality habitat, in a matrix of buffering second growth and residual forest in areas of suitable size to sustain the marbled murrelet population in the short and long-term future.

Fish and Aquatic Habitat: Coho Salmon

Impact: The Final EIS/EIR identified potential significant effects, unless minimized and mitigated.

Mitigation Measures Identified in the Final EIS/EIR: The Final EIS/EIR identifies measures that will minimize and mitigate potential significant effects to the coho salmon. They are specifically described as the HCP's Operating Conservation Program - Aquatics Conservation Plan in the HCP (February 1999) and Implementation Agreement (February 1999). Elements of the Aquatics Conservation Plan include:

1. Management Objectives
2. Watershed Analysis
3. Control of Sediment from Roads and Other Sources
4. Aquatic Habitat Conservation
5. Aquatic Monitoring
6. Adaptive Management

In addition, the 1603 Agreement, which is incorporated into the HCP's Operating Conservation Program, provides additional measures to minimize and mitigate potential significant effects to the coho salmon.

Mitigation Measure Required: The Department finds that it is feasible to adopt, and does hereby adopt, these mitigation measures, as specifically described in the HCP (February 1999) and Implementation Agreement (February 1999) and requires them to be implemented by PALCO as a condition of approval of the ITP, HCP, IA, and 1603 Agreement.

Finding: The Department finds that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen significant or potentially significant environmental effects as identified in the Final EIS/EIR.

Rationale: The Aquatics Conservation Plan is a comprehensive approach to minimize adverse impacts of activities covered under the HCP and IA and provides for the recovery of aquatic systems to a properly functioning condition. These measures are substantially more extensive than those currently applied on the PALCO lands; they represent a significant effort to provide for the needs of coho salmon and have a high probability of achieving management objectives. The 1603 Agreement provides further detailed minimization and mitigation measures for the protection of coho salmon.

3.0 CESA FINDINGS

With respect to CESA, the Department finds that all of the following conditions are met:

(1) Take of Covered Species as defined in the ITP will be incidental to the otherwise lawful activities covered under the ITP;

(2) The impacts of the take will be minimized and fully mitigated through the HCP's Operating Conservation Program and IA;

(3) The conservation and mitigation measures required pursuant to the HCP's Operating Conservation Program are roughly proportional in extent to the impact of PALCO's take;

(4) Where various measures are available to meet the mitigation requirement under CESA, the measures required will maintain PALCO's objectives to the greatest extent possible;

(5) All required measures are capable of successful implementation;

(6) The ITP is consistent with any regulations adopted pursuant to Sections 2112 and 2114 of the Fish and Game Code;

(7) PALCO has ensured adequate funding to implement the measures required by the ITP, and for monitoring compliance with, and the effectiveness of, those measures for each project; and

(8) Issuance of the ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information that is reasonably available, and includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (a) known population trends; (b) known threats to the species; and (c) reasonably foreseeable impacts on the species from other related projects and activities. The Department's finding is based, in part, on the Department's express authority to amend the terms and conditions of the ITP as required by law.

Date: March 1, 1999

By:



L. RYAN BRODDRICK

Chief Deputy Director

CA Department of Fish and Game

The foregoing findings amend earlier CESA findings made by the Department on February 26, 1999. The amendment does not affect the CEQA findings made by the Department on February 26, 1999. Whereas the Department does not view the amendment to be substantive, the Department hereby ratifies its February 26, 1999 approvals of the IA and the Streambed Alteration Agreement.